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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/891,929	06/26/2001	Andreas Herpens	Beiersdorf 722-KGB	3738

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EXAMINER

LAMM, MARINA

ART UNIT PAPER NUMBER

1616

DATE MAILED: 03/09/2004

16

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/891,929

Applicant(s)

HERPENS ET AL.

Examiner

Marina Lamm

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/22/03 has been entered.
2. Claims pending are 18-47. Claims 1-17 have been cancelled. Claims 18-21 have been amended. Claims 45-47 are new.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

4. Claims 18-20 and 22-47 are rejected under 35 U.S.C. 102(a) as being anticipated by Slavtcheff et al. (WO 00/56277).
5. Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

Slavtcheff et al. teach a method for removing sebum from skin (including scalp and hair) by wiping the skin with a towellete impregnated with a composition comprising 1-50%

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of an astringent salt of a metal in a cosmetically acceptable carrier. See Abstract; p.4, lines 13-25; p. 11, lines 28-31. The astringent salts of Slavtcheff et al. include aluminum chlorohydrate, aluminum zirconium salts, aluminum chlorohydroxylactate, etc. See pp. 10-11. The compositions of Slavtcheff et al. may contain other materials for controlling oily skin such as silica. See p. 12, lines 1-9. The limitation "method for controlling blemished skin, acne or seborrheic phenomena" is inherent in the reference, because the reference teaches the claimed method step, i.e. applying the claimed composition to an area affected by increased sebum production. Since the method step is the same, the result will inherently be the same.

Thus, Slavtcheff et al. teach each and every limitation of Claims 18-20 and 22-47.

6. Claims 18-20, 22-26 and 45-47 are rejected under 35 U.S.C. 102(b) as being anticipated by Hewitt et al. (US 3,842,847).

Hewitt et al. teach compositions for the treatment of hair and scalp, said compositions containing 0.5-8% of an astringent metal salt (e.g. aluminum chlorohydrate) that causes a reduction in the activity of the sweat glands of the scalp. See Abstract; col. 2, lines 4-32; col. 6, lines 47-63. The compositions of Hewitt et al. diminish secretions of perspiration and sebum, keep hair and scalp clean for a longer period of time and prevent acne. See col. 6, lines 47-68; col. 7, lines 1-5. The compositions of Hewitt et al. may contain inorganic thickeners including bentonite and starch derivatives. See col. 4, lines 25 and 27. The limitations "preventing or removing greasy hair" and "preventing or removing dandruff" in Claims 46 and 47, respectively, are inherent in the reference, because the reference teaches the claimed method step, i.e. applying the claimed composition to an area affected by increased sebum production. Since the method step is the same, the result will inherently be the same.

Thus, Hewitt et al. teach each and every limitation of Claims 18-20, 22-26 and 45-47.

Claim Rejections - 35 USC § 103

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Slavtcheff et al. or Hewitt et al. in view of Müller et al. (WO 98/01109) as translated by Müller et al. (US 6,248,338).

(a) Slavtcheff et al. in view of Müller et al.

Slavtcheff et al. applied as above. Further, Slavtcheff et al. teach that astringent salts are normally very drying and leave the skin with a taut unpleasant feeling. See p. 12, lines 16-17. Further, the compositions may contain mild emulsifiers. See p. 15. The reference does not teach distarch phosphate of Claim 21. However, Müller et al. teach using distarch phosphate in skin or hair care composition as stability improver, as a viscosity regulator, as a (co)emulsifier and as an agent for improving skin feel and increasing water retention capacity of the skin. See col. 3, lines 27-28; col. 5, lines 23-65. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the composition of Slavtcheff et al. such that to employ distarch phosphate. One having ordinary skill in the art would have been motivated to do this to obtain compositions having improved stability, good skin feel and moisturizing effect as suggested by Müller et al.

(b) Hewitt et al. in view of Müller et al.

Hewitt et al. applied as above. Hewitt et al. teach that starch derivatives can be used as thickeners for their hair care compositions. See above. Hewitt et al. do not explicitly teach the

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claimed distarch phosphate. However, Müller et al. teach using distarch phosphate in skin or hair care composition as discussed above. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the composition of Hewitt et al. such that to employ distarch phosphate. One having ordinary skill in the art would have been motivated to do this to obtain compositions having desired viscosity and improved stability as suggested by Müller et al.

9. The rejection of Claims 27-29, 31-38 and 40-44 under 35 U.S.C. 103(a) as being unpatentable over Hewitt et al. in view of Kropf et al. (US 6,316,030) is maintained for the reasons of the record.

10. The rejection of Claims 30 and 39 under 35 U.S.C. 103(a) as being unpatentable over Hewitt et al. in view of Kropf et al. and further in view of Jaeger et al. is maintained for the reasons of the record.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 6,656,456 discloses skin care compositions comprising cyclodextrins.

12. No claim is allowed at this time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (571) 272-0618. The examiner can normally be reached on Mondays, Wednesdays and Fridays.

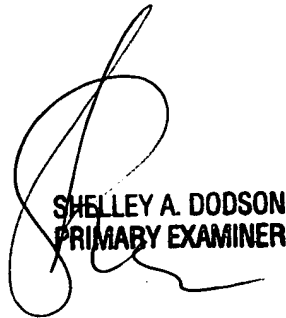
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached at (571) 272-0602.

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The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ml
3/6/04


SHELLEY A. DODSON
PRIMARY EXAMINER